

**SABAS BUSTAMANTE ET AL., PLAINTIFFS AND APPELLANTS, VS.
JOSE M. RATO Y TUASON ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 30668. August 28, 1929*

Ponente: STREET, J.

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On December 18, 1924, this court made a decision in Gonzalo Tuason et al., petitioners (G. R. No. 22510[1]), in which Sabas Bustamante et al., appeared in the role of petitioners and appellees against Jose Maria Tuason and others, appellants. The litigation was then already eighteen years old; and, at the beginning of the opinion in said case, it was observed by Justice Johnson, the author of the opinion, that it had been commenced so long ago .that perhaps it had been forgotten by many of the original litigants. In the decision at first promulgated in that case by the first division of the court the judgment of the trial court was affirmed, with the result that the appellee, Sabas Bustamante and others, were adjudged to have established the claims therein made by them. However, upon motion for reconsideration and rehearing, the full court, comprising all the justices of the court, as its personnel now exists, with the exception of the author of this opinion, set aside the judgment previously entered, and the defendant-appellants were absolved from all liability, "without prejudice to the right of the appellees, if they have in fact a contract for the purchase of any parcel of land within the Hacienda Maysilo, to commence another action, to compel a compliance therewith,"[1] The present litigation was instituted in conformity with the reservation thus made; and it is obvious that the present action cannot be maintained unless the fundamental condition expressed in said reservation shall be established.

The original complaint, then, was filed in this case in March, 1925, by Sabas Bustamante and numerous other persons, sixty-one in all, according to the final amended complaint, for the purpose of compelling the defendants Jose M. Rato y Tuason and others, as owners of the Hacienda Maysilo, to execute a deed conveying to the plaintiffs lots indicated by the numbers 25-A, 25-B, 25-C, 25-D, 25-E, 25-F and 25-G. The complaint was at various times amended, but the litigation now stands upon the amended complaint of December 5, 1925. The defendants, except Jose M. Rato y Tuason, have been succeeded by the Philippine Land Improvement Co. as owner of part of the land which is the subject of the action. It results that Jose M. Rato y Tuason and the Philippine Land Improvement Co. are the immediate and effective defendants in the suit. The plaintiffs are in possession of the land for the forced purchase of which this action was instituted; and inasmuch as the defendants deny the plaintiffs' right, a cross-complaint was filed by the defendants in connection with their answer asking for recovery of possession and for judgment for the value of use and occupation during the time the property has been held by the plaintiffs.

Upon hearing the cause the trial judge found that the condition laid down by this court in the reservation contained in the dispositive part of the decision in G. R, No. 22510 (supra) had not been fulfilled, and that as a consequence the plaintiffs had not established a right to specific performance of their alleged contract of purchase. He therefore ordered that the defendants be absolved from the complaint. Furthermore, in pursuance of the prayer contained in the cross-complaint he ordered the plaintiffs to surrender to the defendants the possession of the

parcels of land held by them, within the subject of controversy, and condemned the plaintiffs to pay to Jose M. Rato y Tuason and to the Philippine Land Improvement Co., severally, the sums of money indicated in the schedule annexed to the decision, and required the plaintiffs further, from January 1, 1928, to pay, during continuance of their occupation, to the said Jose M. Rato y Tuason and Philippine Land Improvement Co. the sum of fourteen pesos, per annum, per hectare for the land which they are occupying, in the character of rent or for use and occupation. Finally the plaintiffs were adjudged to pay the costs of the action.

It is worth observing that during the period of more than twenty years covered in one way or another by this controversy there have been two decisions made by the Court of First Instance and two decisions in this court; and while the first pronouncements of the Court of First Instance and of this court were favorable to the appellants, the last words spoken by this court and by the Court of First Instance were favorable to the present appellees, defendants in the action.

The opinion which is the subject of this appeal, comprised in pages 128-164, inclusive, of the bill of exceptions, contains a careful and elaborate exposition of the facts and law of the case; and although said opinion naturally does not meet with favor at the hands of the attorneys for the appellants, we are nevertheless of the opinion that the conclusions stated therein are sound and irrefutable. What is briefly said in this opinion must therefore be considered to be merely supplemental to the exposition contained in the appealed decision.

As already observed, the reservation contained in our decision of February 6, 1925, by virtue of which reservation alone this action was instituted, proceeded on the assumption that, in order to succeed, the plaintiffs must show that they have an enforceable contract for the purchase of the land concerned in this action. It is now notorious in this record that there is no written contract in existence purporting to give the plaintiffs the right to purchase any land. But by an elaborate system of representation, the plaintiffs seek to insinuate themselves into a right acquired by Apolinario Baltazar, successor of Silverio Baltazar, by virtue of a receipt (Exhibit F) executed in representation of the defendants by Tomas Arguelles on December 22, 1910. This receipt is of the following tenor:

"He recibido del Sr. Apolinario Baltazar la cantidad de ciento ochenta pesos a cuenta del importe de cinco parcelas dentro del municipio de Caloocan, provincia de Rizal."

It is not questioned that Tomas Arguelles had authority to bind the defendants and that the owners were bound, by virtue of that receipt, to convey to him five (parcels of land. But two things appear incontrovertibly in the case which are fatal to the plaintiffs' contention. The first is that the representatives of the estate have complied with the obligation which was assumed by virtue of said receipt by conveying to Apolinario Baltazar certain parcels of land which were accepted by him in complete satisfaction of the obligation indicated in the receipt. Furthermore, the receipt shows on its face that the obligation assumed was to Baltazar personally, and not to Baltazar as representative of other persons. Nor is there any satisfactory proof tending to show that, at any time before the obligation was satisfied, the representatives of the defendants had any reason to know, or suspect, that Baltazar was acting in a representative capacity for the plaintiffs only. In this respect the case resembles that of *Dizon vs. Rivera* (48 Phil., 996), which was an action against the same estate based on similar grounds to this, and in which this court refused to sustain the contention of the plaintiffs. It is in our opinion likewise impossible to sustain the contention of the appellants.

The voluminous record contains a number of collateral considerations and questions, but we are of the opinion that at heart the case depends upon lack of privity between the plaintiff-appellants and the contract under which they seek to enforce their supposed rights. The action for specific performance therefore fails.

In the twelfth assignment of error the appellants raise a question as to the liability of the plaintiff-appellants for the several sums for which the trial court gave judgment, under the crosscomplaint, in favor of the defendants, in

the character of rent or compensation for use and occupation. In this connection it must be borne in mind that this is an action for specific performance of a contract of sale. The plaintiffs are not questioning, and have not questioned, the title of the appellees to any of the property involved in this lawsuit; and inasmuch as possession on the part of the appellants is admitted, it results that, upon failure of the action for specific performance, the defendants are entitled, under their cross-complaint, to obtain compensation for use and occupation, without being able to take advantage of their claim that they have had possession in good faith.

The judgment appealed from must be affirmed, and it is so ordered, with costs against the appellants.

Avanceña, C. J., Johnson, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

[1] Not reported.

[1]Bustamante vs. Tuason (47 Phil., 433).

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